UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

GRANT BRICKLAYING CO., INC.

Employer

and Case 14-RC-12612

BRICKLAYERS' LOCAL NO. 1
OF MISSOURI

Petitioner

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, Grant Bricklaying Co., Inc., is a masonry contractor and a member of the Mason Contractors Association of St. Louis, a multiemployer association of masonry contractors, here called the Association. For more than 30 years, the Employer has authorized the Association to negotiate and sign collective-bargaining agreements governed by Section 8(f) of the Act on its behalf with the Petitioner, Bricklayers' Local No. 1 of Missouri. The parties' most recent 8(f) collective-bargaining agreement expires on May 31, 2006. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent 26 employees employed by the Employer in the unit set forth in the current collective-bargaining agreement. A hearing officer of the Board held a hearing and the parties filed briefs, which I have considered.

## I. ANALYSIS

The Employer raises two issues. First, the Employer contends that the current 8(f) agreement bars the petition. This is frivolous. An 8(f) agreement does not serve as a bar to a representation petition. National Labor Relations Act, 29 U.S.C. §158(f); *John*

*Deklewa & Sons*, 282 NLRB 1375, 1387 (1987), enfd. 843 F.2d 770 (3d Cir. 1988); *S. S. Burford, Inc.,* 130 NLRB 1641, 1642 (1961).[1]

Secondly, the Employer contends that the contractual unit is inappropriate because it includes classifications in which the Employer does not employ any employees. However, in making unit determinations where the employees in question are covered by an 8(f) agreement, the appropriate unit is normally the unit as defined by the contract. *John Deklewa & Sons*, 282 NLRB at 1377. There is no reason to depart from this rule where the parties agree that the Employer's 26 masonry employees are properly included in the requested unit. The issue is one of semantics. Moreover, while the Employer classifies all of its masonry employees as bricklayers, the record reflects that these employees perform some work in the other masonry classifications. Regardless, the contractual unit remains the appropriate unit even if the Employer does not perform work or employ employees in every unit classification. *W. R. Mollohan, Inc.*, 333 NLRB 1339, 1345 (2001). Accordingly, I find that the recognized contractual unit is an appropriate unit.

## II. CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

[1] In its brief, the Employer contends that the petition is barred for 6 months by Case 14-RC-12596 (2006), where the Petitioner identified the Association and requested a multiemployer unit of employees employed by the Association's 65 masonry contractors. I dismissed the petition naming the Association without prejudice for the Petitioner to proceed on a single-employer basis. Accordingly, there is no prejudice period.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6*)* and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees including bricklayers, stonemasons, blocklayers, pointers, cleaners and caulkers and their apprentices, and masonry superintendents and foremen employed by the Employer at its St. Louis, Missouri facility, excluding office clerical and professional employees, guards, and supervisors as defined in the Act, and employees represented by other labor organizations.

## III. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by Bricklayers' Local No. 1 of Missouri. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### A. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote.

Those in the military service of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the election, or who have some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the election, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed.[2]

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility,* 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly

[2] Because the Employer is engaged in the construction industry, the eligibility of the voters will be determined by the formula in *Daniel Construction Co.*, 133 NLRB 264 (1961), and *Steiny & Co.*, 308 NLRB 1323 (1992).

legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **June 7, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794 or by electronic mail at Region14@nlrb.gov. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## IV. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m. EDT on **June 14, 2006**. This request may not be filed by facsimile.

Dated: May 31, 2006
at: Saint Louis, Missouri

/s/[Ralph R. Tremain]
Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14